S.B.CIVIL WRIT PETITION NO.4898/2005

Dilip Kumar Joshi
v.
State of Rajasthan & Ors.

Date of Order :: 7th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.R.Mehta, for the petitioner.
Mr. Shyam Ladrecha, Additional Government Advocate.

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The petitioner under an order dated 15.1.1993 came to be appointed as Teacher Gr.III and was placed on probation for a period of two years. After successful completion of probation the petitioner was confirmed on the post referred above and he was also stood selected for the post of Teacher Gr.III in the Department of Education, Government of Rajasthan, under an order dated 30.3.1996. The respondents on selection of the petitioner as Teacher Gr.III in Department of Education extended the benefit as prescribed under Rule 26(1)(a)(ii) of the Rajasthan Service Rules, 1951 (hereinafter referred to as “the Rules of 1951”) by protecting the pay already received by the petitioner as a Teacher Gr.III under Panchayati Raj service. The District Education Officer by an order dated 5.3.1998 ordered for fixation of the petitioner at the minimum pay scale and also ordered for withdrawal of extension of benefit given under Rule 26(1)(a)(ii) of the Rules of 1951, hence this petition for writ is preferred.

It is contended by counsel for the petitioner that prior to his appointment in Department of Education the petitioner was already a government servant serving in one service, therefore, he is entitled for getting the benefit of protection of pay as prescribed under Rule 26(1)(a)(ii) of the Rules of 1951.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner was appointed as Teacher Gr.III by way of direct recruitment, hence he is not entitled for getting the benefit of protection of pay by extending the provisions of Rule 26(1)(a)(ii) of the Rules of 1951.

Heard counsel for the parties.

Rule 26(1)(a)(ii) of the Rules of 1951 reads as follows:-

> “26(1)(a)(ii)Government servant already serving in one service, cadre or department who is appointed to another service, cadre or department by direct recruitment or special selection (including transfer other than by deputation, from one service, cardiac or department, to another) and not by promotion according to service rules, shall have his initial pay fixed as follows:-

Category	Last pay on post	Initial pay on new post
1	2	3
(a)	Substantive on a permanent post and not officiating on a higher post.	(a)Persons in category (a) shall have pay fixed as in manner stated below. (ii)If the maximum of the scale of new post in equal to the maximum of the old post, then pay shall be fixed at the stage of the time scale of the new post which is equal to his last substantive pay on the old post, or if there is no such stage the stage next below that pay plus personal pay equal to the difference.

From reading of the rule referred above it is quite clear that it is having application on the appointments made by way of direct recruitment and not to the promotions. The respondents, therefore, committed an error by withdrawing the benefit extended to the petitioner by application of Rule 26(1)(a)(ii) of the Rules of 1951. The petitioner was earlier serving the Panchayati Raj Department and thereafter he was employed with the Department of Education of Government of Rajasthan and as such he is entitled for fixation of his pay as prescribed in column 3 given in the table prescribed under the rule referred above.

Accordingly, this petition for writ deserves acceptance. The same, therefore, is allowed. The order Anx.9 dated 5.3.1998 passed by the District Education Officer (Elementary Education) First, Banswara is quashed. The respondents are directed to extend the benefit of the provisions of Rule 26(1)(a)(ii) of the Rules of 1951 qua the petitioner by protecting the pay received by him while serving the Panchayati Raj Department.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.